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13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 DEMETRIC DI-AZ, OWEN DIAZ AND  
LAMAR PATTERSON,

16 Plaintiffs,

17 v.

18 TESLA, INC. DBA TESLA MOTORS,  
19 INC., CITISTAFF SOLUTIONS, INC.;  
WEST VALLEY STAFFING GROUP;  
20 CHARTWELL STAFFING SERVICES,  
INC.; NEXTSOURCE, INC.; and  
21 DOES 1-10, inclusive

22 Defendants.

Case No. 3:17-cv-06748-WHO

**DECLARATION OF REANNE SWAFFORD-  
HARRIS IN SUPPORT OF DEFENDANT  
TESLA, INC.'S MOTION TO RETAIN  
CONFIDENTIALITY OF DOCUMENTS  
PURSUANT TO PROTECTIVE ORDER**

*[Filed concurrently with the Notice of Motion and  
Memorandum of Points and Authorities,  
Declaration of Brandon Ward and [Proposed]  
Order]*

Date: January 8, 2020  
Time: 2:00 p.m.  
Courtroom: 2, 17<sup>th</sup> Floor  
Judge: Hon. William H. Orrick

Complaint Filed: October 16, 2017  
Trial Date: March 2, 2020

1 I, Reanne Swafford-Harris, declare as follows:

2 1. I am an attorney with Sheppard Mullin Richter & Hampton, LLP, counsel of record  
3 for Tesla, Inc. dba Tesla Motors, Inc. (“Tesla” or “Defendant”). I submit this Declaration in support  
4 of Tesla’s Motion to Retain Confidentiality of Documents Pursuant to Protective Order. I make this  
5 declaration as to my own personal knowledge and, if called as a witness, I could and would  
6 competently testify to all facts contained herein.

7 2. On October 16, 2019, October 19, 2019 and October 22, 2019, Plaintiffs served three  
8 separate letters to Tesla regarding their challenges to Tesla’s confidential document designations  
9 (the “Notice”). On October 30, 2019, I met and conferred with Plaintiffs’ counsel Larry Organ and  
10 inquired why Plaintiffs’ counsel was challenging Tesla’s designations at this advanced stage in the  
11 litigation. Discovery for the Parties closed on October 30, 2019; and the discovery motion deadline  
12 had also closed. A true and correct copy of the Court’s Civil Pretrial Order, Dkt. 78 is attached  
13 hereto as Exhibit A. Additionally, I informed Mr. Organ that by the time this Motion is heard,  
14 Plaintiffs would have already filed their Opposition to all of the parties’ motions for summary  
15 judgment or partial summary judgment, and had filed one of them.

16 3. In response, Counsel for Plaintiffs informed me he wished to use confidential  
17 documents at trial. I then informed Plaintiffs’ counsel that a separate order will govern the use of  
18 Protected Material at trial, in accordance with Section 3 of the Parties’ Protective Order, and offered  
19 to meet and confer on that separate order. A true and correct copy of the Parties’ Stipulated and  
20 Protective Order, Dkt. 50, is attached hereto as Exhibit B. Plaintiffs’ counsel refused to do so,  
21 clearly indicating their intent to disclose protected material outside this litigation in an attempt to  
22 harass and unnecessarily burden Tesla.

23 4. In the Notice, Plaintiffs appear to challenge the entirety of Tesla’s production  
24 designated “Confidential,” on the basis that “they are merely routine business documents not  
25 privileged.” Further, the Notice merely concludes generally, with no basis in fact or evidence, that  
26 Tesla’s internal documents and policies were provided to its employees and therefore not treated as  
27 confidential by Tesla. True and correct copies of Plaintiffs Notice letters are attached hereto as  
28

1 Exhibits E-G. During the call however, I informed Larry that we were agreeable to de-designating  
2 some of the challenged documents.

3 5. Plaintiffs' counsel intends to circumvent a separate protective order with Tesla in an  
4 arbitration, *Dewitt Lambert v. Tesla, Inc. dba Tesla Motors, Inc.*, filed in California Superior Court,  
5 Case No. RG17854515; JAMS Ref. No. RG18927296, ("*Lambert*"), which required that the  
6 plaintiff and their counsel destroy any documents after the conclusion of arbitration. Instead,  
7 Plaintiffs' counsel issued a subpoena on their own office to obtain the confidential documents, which  
8 were supposed to be destroyed, in order to use them outside of the *Lambert* litigation (which the  
9 protective order prohibited). This Court previously issued an order prohibiting Plaintiffs' counsel  
10 from seeking to bypass the procedural protections to which their client agreed in *Lambert*; and that  
11 "[i]nformation designated as "Confidential" in *Lambert* shall not be disclosed . . ." A true and  
12 correct copy of the Court's Discovery Order, Dkt. 80, is attached hereto as Exhibit C.

13 6. Plaintiff's counsel also attempted to circumvent the *Lambert* protective order in a  
14 third case, *Marcus Vaughn v. Tesla, Inc. dba Tesla Motors, Inc.*, filed in California Superior Court,  
15 Case No. RG17882082, by subpoenaing their own office in that case as well, seeking to have  
16 disclosed confidential documents that should have been destroyed. The Court there indicated that  
17 subpoenaing oneself was not the route for Plaintiffs' counsel to take in order to obtain the documents  
18 sought.

19 7. The documents sought to be protected by Tesla's "CONFIDENTIAL" designation,  
20 contain confidential information regarding pay records, HR investigations, and performance and  
21 personnel/disciplinary issues of third-party employees. A true and correct copy of Tesla's  
22 Production Chart of Challenged Documents is attached hereto as Exhibit D.

23 8. I declare under penalty of perjury under the laws of the United States of America that  
24 the foregoing is true and correct.

25 Executed this 18<sup>th</sup> day of November 2019, at San Francisco, California.

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28 REANNE SWAFFORD-HARRIS